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1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 8:160. Valuation of municipal solid waste landfill facilities.

5 RELATES TO: KRS 132.020, 132.200, 224.1-010

6 STATUTORY AUTHORITY: KRS 131.130, 132.202

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.202 requires the department to
8 promulgate an administrative regulation to implement a valuation methodology for the taxation of
9 property used as a landfill, also known as a municipal solid waste disposal facility. This
10 administrative regulation establishes a uniform system of ad valorem valuation for a municipal
11 solid waste disposal facility as defined in KRS 224.1-010(15).

12 Section 1. Definitions. (1) "Compaction ratio" means the ratio that expresses the relationship
13 of the number of tons (2,000 pounds) of waste that will fill one (1) cubic yard of landfill capacity.
14 For example, a compaction ratio of 0.60 means that sixty (60) percent of one (1) ton (1,200 pounds)
15 of waste can be compacted into one cubic yard of landfill capacity.

16 (2) "Cover materials" means soil or other suitable material that is spread and compacted on
17 the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires,
18 and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an
19 aesthetic appearance.

20 (3) "Department" means Department of Revenue, Finance and Administration Cabinet,
21 Commonwealth of Kentucky.

(4) "Discount rate" means a pre-tax percentage rate used to discount the annual royalty income over the projected remaining economic life of the landfill to a present value.

(5) "Effective tipping fee" means the average net dollar amount collected per ton for depositing waste into the landfill being assessed not including surcharges, host fees, and related taxes collected and received in gross revenue by the landfill owner or operator.

(6) "General administrative expenses" means the product of two (2) percent \times (net revenue of the landfill owner or operator \times fifteen (15) percent). Net revenue shall include other landfill income. Net revenue shall not include host fees, surcharges and remediation fees.

(7)(6) "Landfill" means a municipal solid waste disposal facility as defined by KRS 224.1-010(15) but does not include construction and demolition debris (CDD) landfills of less than one (1) acre.

(8)(7) "Landfill valuation method" means a discounted cash flow, also known as yield capitalization, which is a valuation methodology used to determine the fair cash value of a landfill's real property.

(9)(8) "Other landfill income" means the five (5) year average of gross income generated by a landfill from sources other than effective tipping fees, net of applicable expenses.

(10)(9) "Present value" means the sum of the discounted projected annual royalty income over the remaining life of the landfill. The present value formula is:

$$PV = \frac{CF_1}{(1+Y)^1} + \frac{CF_2}{(1+Y)^2} + \frac{CF_3}{(1+Y)^3} + \frac{CF_4}{(1+Y)^4} + \frac{CF_5}{(1+Y)^5} + \dots + \frac{CF_n}{(1+Y)^n}$$

CF = the annual projected royalty income	N = the number of annual periods in the projection
Y = the annual pre-tax discount rate	PV = the present value of landfill

1 ~~(11)~~~~(10)~~ "Remaining permitted capacity" means the volume of permitted airspace remaining
2 for the placement of waste materials.

3 ~~(12)~~~~(11)~~ "Reversionary value" means the potential future market value of a landfill after all
4 post- closure regulatory requirements, including a required minimum post-closure monitoring
5 period of at least thirty (30) years, have been fulfilled by the owner or operator.

6 ~~(13)~~~~(12)~~ "Royalty income" means that portion of effective tipping fees and other landfill
7 income that would be paid pursuant to a presumed comparable market lease agreement by the
8 landfill operator to the real property owner in consideration for the right to use the real property
9 for landfill purposes.

10 ~~(14)~~~~(13)~~ "Royalty rate" means a percentage rental rate to real property applied to the sum of
11 the annual effective tipping fee revenue and other landfill income that results in the estimated
12 royalty income for each year of the estimated remaining economic life of the landfill.

13 ~~(15)~~~~(14)~~ "Tax year" means a calendar tax year.

14 ~~(16)~~~~(15)~~ "Ton" means 2,000 pounds.

15 ~~(17)~~~~(16)~~ "Tons of waste" means the five (5) year average of annual tons of waste received by
16 the landfill, as determined utilizing information submitted to the Division of Waste Management
17 for the Kentucky Department for Environmental Protection on Form DEP 7046, as incorporated
18 by reference in 401 KAR 47:110, Section 5(1)(h).

19 ~~(18)~~~~(17)~~ "Waste" means waste as defined by KRS 224.1-010(31)(a).

20 ~~(19)~~ "Waste boundary" means the outermost perimeter of the landfill waste (projected in the
21 horizontal plane) as it would exist at completion of the disposal activity.

22 Section 2. Landfill valuation methodology formula. (1) The department shall determine the
23 fair cash value of a landfill's real property in compliance with the landfill valuation method

1 established in this subsection.

2 (a) The department shall estimate the remaining permitted economic life of the landfill by
3 dividing the estimated annual cubic yards of waste deposited into the landfill into the total
4 remaining permitted capacity within the waste boundary of the landfill.

5 1. The compaction ratio shall be calculated by taking the average of the five (5) most recent
6 compaction ratios from the Solid Waste Landfill Annual Survey submitted to the Division of
7 Waste Management for the Kentucky Department for Environmental Protection on Form DEP
8 8059, available at <http://dep.ky.gov/formslibrary/Documents/DEP8059.doc>. Form DEP 8059 is
9 the form to be submitted by a municipal solid waste landfill permittee in conjunction with the
10 annual survey report required by 401 KAR 47:190, Section 8. When calculating the average,
11 consideration shall be given to factors that alter the five (5) year average as an appropriate
12 estimate.

13 2. The remaining permitted capacity within the waste boundary shall include the reported
14 ~~[shall be as reported on the]~~ remaining airspace line item in the most recent Solid Waste Landfill
15 Annual Survey submitted to the Division of Waste Management for the Kentucky Department
16 for Environmental Protection on Form DEP 8059 for the landfill being assessed. The volume
17 shall be adjusted for the capacity consumed from the date of the survey used to prepare the
18 calculation, until the end of the tax year with no annual intake volume growth over the remaining
19 forecasted permitted life of the landfill. Actual tons for the applicable dates shall be converted to
20 permitted cubic yards using the compaction ratio and the result shall be subtracted from the
21 remaining permitted capacity as presented in Form DEP 8059. If cover materials are used at the
22 landfill, the total remaining permitted capacity shall be multiplied by .85 to account for a standard
23 reduction of remaining permitted capacity for cover materials.

1 3. The estimated annual cubic yards of waste deposited into the landfill shall be equal to the
2 average of the annual cubic yards of waste deposited into the landfill for the five (5) tax years
3 prior to the current tax year. The landfill operator shall report to the department the annual cubic
4 yards of waste deposited into the landfill for the five (5) tax years prior to the current tax year by
5 April 30 of the current tax year. When calculating the average, consideration shall be given to
6 factors that alter the five (5) year average as an appropriate estimate.

7 4. The remaining economic life of the landfill shall be calculated as follows: remaining
8 permitted capacity (cubic yards) divided by the estimated annual cubic yards of waste deposited
9 equals the remaining permitted economic life of the landfill.

10 5. The landfill operator shall provide the department with copies of the annual surveys and
11 all quarterly reports filed by the landfill operator with the Division of Waste Management
12 pursuant to 401 KAR 47:190 during the five (5) years on or before April 30 of the current tax
13 year and a copy of its current operating permit.

14 (b) The effective tipping fee shall be calculated by dividing landfill historical gross tipping
15 fee revenue (excluding surcharges, host fees, and related taxes collected and received in gross
16 revenue by the landfill owner or operator) collected for the five (5) most recent tax years by
17 landfill related historical tonnage for the five (5) most recent tax years as demonstrated by the
18 records of the landfill operator.

19 1. The landfill operator shall provide the department with its calculation of the effective tip-
20 ping fees for the five (5) tax years prior to the current tax year, together with its annual operating
21 financial statements for each tax year, that shall include tipping fee revenue, expenses for
22 surcharges, host fees and related taxes, and other landfill income.

23 2. The department shall review the effective tipping fees calculation submitted by the landfill

1 operator and shall estimate the forecasted effective tipping fee for the current tax year. Increases
2 in forecasted effective tipping fees shall be determined by an indexed factor not to exceed the
3 annual Consumer Price Index (CPI), as defined by KRS 154.30-010(11), for the year prior to the
4 current tax year.

5 3. In estimating the annual effective tipping fee, the department shall consider any facts or
6 circumstances that exist that may have an impact on current or future effective tipping fees.

7 (c) The department shall estimate the other landfill income for the current tax year based
8 upon the records of the landfill operator for the five (5) tax years prior to the current tax year.

9 1. The landfill operator shall provide the department with its calculation of other landfill in-
10 come for the five (5) tax years prior to the current tax year, together with its annual operating
11 financial statements provided pursuant to this section.

12 2. The department shall review the other landfill income submitted by the landfill operator
13 and included in the operating financial statements submitted and shall estimate other landfill
14 income for the current tax year and any annual increase in the other landfill income.

15 3. In estimating other landfill income, the department shall consider all relevant facts or
16 circumstances that exist that may have an impact on current or future other landfill income.

17 (d) If the landfill does not have five (5) years of operating data, due to its date of first
18 operation being less than five (5) years prior to the current tax year, the department shall
19 determine the landfill's compaction ratio, consumed landfill capacity, estimated annual cubic
20 yards of waste deposited, effective tipping fees, and other landfill income as a rolling average of
21 the number of years for which operating data exists for the landfill.

22 (e) The department shall estimate an annual royalty income for each year of the landfill's
23 remaining economic life by the following calculation:

1 (((effective tipping fee × tons of waste) + other landfill income) × royalty rate) - general
2 administrative expenses = royalty income.

3 (f) The department shall determine the present value of the royalty income of the landfill for
4 all remaining years of its remaining permitted economic life by applying the discount rate to each
5 year's royalty income as determined pursuant to paragraph (e) of this subsection.

6 (g) The discount rate shall be twenty (20) percent unless the landfill operator or the
7 department establishes a higher or lower discount rate based upon applicable market factors and
8 the applicable facts and circumstances attributable to the landfill.

9 (h) The present value of the royalty income for all remaining years of the landfill's remaining
10 economic life shall be the landfill real property valuation to be used as a tax basis.

11 (i) The royalty rate shall be fifteen (15) percent unless the landfill operator or the department
12 establishes a higher or lower royalty rate based upon applicable market factors and the applicable
13 facts and circumstances attributable to the landfill.

14 (j) The department shall estimate a reversionary value, if any, as of the date that all post
15 closure regulatory monitoring requirements of federal, state, or local governments are completed.
16 The reversionary value shall be discounted to its present worth as of January 1 of the current tax
17 year and the resulting value shall be added to the sum of all year's present values as calculated
18 pursuant to paragraph (f) of this subsection.

19 (2) The fair cash value of any other real property, including improvements, not already
20 included in the valuation of the landfill through the landfill valuation method shall be assessed
21 by the department in the same manner as real property of all other taxpayers under KRS Chapter
22 132.

23 (a) State and local real property taxes shall be applied to the assessed value of the other real

property and shall be added to the taxes assessed on the real property value determined by the landfill valuation method.

(b) The landfill operator shall provide the department with a summary statement of the total acreage of land owned and leased by the landfill company, the total acreage of the permitted landfill area, the total acreage of permitted disposal area, the total acreage closed and covered and the total acreage held for non-landfilling purposes including buffer.~~[of the active contained landfill.]~~

(3) Any information required to be supplied by the landfill owner or operator in connection with this administrative regulation shall be held in strict confidence by the department unless otherwise required by law.

(4) The allocation of value of tangible personal property incorporated into a landfill and certified as pollution control pursuant to KRS 132.020(1)(k) shall be determined by taking the present value of landfill royalty income, as determined in subsection (1) of this section and subtracting out the value attributable to undeveloped land and the value attributable to real property structures (i.e., demonstrative and nonexclusive examples of which include maintenance buildings, perimeter fencing, etc.) not certified as pollution control. The remaining value shall constitute the value allocation attributable to certified pollution control tangible personal property incorporated into the landfill.

103 KAR 8:160

APPROVED BY AGENCY:

Daniel Bork

DANIEL P. BORK, COMMISSIONER

Department of Revenue

Finance and Administration Cabinet

Oct 10, 2019

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 27, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 8:160

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies areas of ambiguity concerning the valuation system for municipal solid waste disposal facilities ("landfills") and provides better guidance to taxpayers.

(b) The necessity of this administrative regulation: KRS 132.202 mandates the Department of Revenue to promulgate an administrative regulation outlining a valuation methodology for landfills.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amended administrative regulation provides further guidance and clarity to taxpayers and the Department in the value of a municipal landfill for property tax purposes as required by KRS 132.202.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes a uniform and consistent methodology for valuing municipal solid waste landfills using a discounted cash flow analysis.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions and clarifies ambiguous terminology to provide clearer guidance to the taxpayer concerning the valuation of municipal solid waste landfills.

(b) The necessity of the amendment to this administrative regulation: See 1(b).

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c).

(d) How the amendment will assist in the effective administration of the statutes: See 1(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all permitted landfills in Kentucky. There are currently 26 landfills operating in the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required as the amended guidance is merely clarifying the existing regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are expected as a result of complying with the updated guidance provided herein.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Municipal solid waste landfill owners will now have greater clarity concerning their

assessments, as the value calculated by the methodology herein is based on information and records that are readily available to them and identifies how the information is to be used.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Current staff and budgeted funding will absorb any cost associated with implementation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs on an ongoing basis as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be done with existing funds and personnel primarily through the Department of Revenue, Office of Property Valuation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. This administrative regulation establishes the uniform valuation methodology for all municipal solid waste landfills in Kentucky and will be applied equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 8:160

Contact Person: Lisa Swiger
Phone Number: (502) 564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Property Valuation, and counties or municipalities which may own and/or operate a municipal solid waste disposal facility ("landfill").

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100, KRS 131.130(1), and KRS 132.202.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None that is currently known.

(c) How much will it cost to administer this program for the first year? No additional costs to the Department of Revenue will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: